

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 03-33202 DHW
Chapter 13

ROBERT RAY DELLINGER, JR.,

Debtor.

MEMORANDUM OPINION

On January 18, 2006 the debtor in this chapter 13 case, Robert Ray Dellinger, Jr. ("debtor") filed an objection to Claim No. 1 of Capital One Auto Finance ("Capital One"). The matter was set for evidentiary hearing on May 1, 2006. At the hearing the parties informed the court that apart from the debtor's objection to the claim, the creditor's response, and the affidavit of Capital One's agent, no other evidence would be presented. Hence, the court took the matter as submitted.

Jurisdiction

The court's jurisdiction in this contested matter is derived from 28 U.S.C. § 1334 and from the United States District Court for this district's order referring all title 11 matters to the Bankruptcy Court. Further, in that this claims objection is a core proceeding under 28 U.S.C. § 157, the court's jurisdiction is extended to the entry of a final order or judgment.

Factual Findings

The debtor filed this chapter 13 case on October 17, 2003. Capital One filed a claim in the amount of \$14,425.68 secured by a 1999 Chevrolet truck.

The debtor filed the instant objection contending that the claim has been satisfied. In support of that contention, the debtor attached Capital One's April 19, 2005 letter to the debtor which

states that the “account is now considered paid in full.” Further, the debtor attached a copy of the retail installment sales contract for the vehicle marked “PAID.”

Capital One filed a response contending that the letter was sent and the contract marked paid in error and that only the secured portion of the claim has been satisfied. The confirmed plan bifurcated the claim into secured and unsecured parts pursuant to 11 U.S.C. § 506 (\$7,565 of the claim was allowed as secured and \$6860.68 was treated as unsecured). Subsequently, the truck was wrecked and \$4,336.01 in insurance proceeds were paid. These funds were sufficient to pay the entire balance of the secured portion of Capital One’s claim, leaving only the unsecured balance as unpaid.

In order for the insurer to receive the salvage value of the wrecked vehicle, Capital One released its lien on the wrecked truck. Because the secured portion of the claim was paid from the insurance proceeds, Capital One, by mistake, sent the debtor correspondence stating that the debt was satisfied and marked the debtor’s contract “paid.” Capital One maintains that the unsecured claim has not been satisfied and has a current balance of \$6,456.26. These facts are supported by the affidavit of Capital One’s agent, Nina Samuel. The trustee’s office reflects a balance on the unsecured claim of \$5,705.71.

Conclusions of Law

Unless a party in interest objects, a proof of claim is deemed allowed merely upon its proper filing. See 11 U.S.C. § 502(a). A properly filed claim constitutes prima facie evidence of both the validity and amount of the claim. See Fed. R. Bankr. Proc. 3001(f). If a party in interest objects to the claim, that party has the burden of presenting sufficient evidence to rebut the Rule 3001(f) presumption of validity. If the presumption of validity is rebutted, the ultimate burden of proof rests with the claimant to prove the amount of the claim. Therefore, in a claims contest matter, there is a

shifting burden of proof with the ultimate burden of proof resting upon the claimant. *In re Allegheny International, Inc.*, 954 F.2d 167, 173-174 (3rd Cir. 1992).

In the instant case, the debtor rebutted the presumption of validity by offering evidence emanating from the creditor that the claim was paid. However, the creditor has met its ultimate burden of persuasion by explaining how the mistake occurred.

This explanation is sufficient in light of the following. The debtor has not challenged the amount of the claim as filed, and the debtor has presented no evidence of any payment outside the trustee on the claim other than the insurance proceeds which satisfied only the secured portion of the claim. The trustee's records currently reflect a balance on the unsecured portion of the claim in the amount of \$5,705.71.

For the above reasons, the court concludes that the objection to the claim is due to be OVERRULED. A separate order will enter consistent with this opinion.

Done this 26th day of May, 2006.

/s/ Dwight H. Williams, Jr.
United States Bankruptcy Judge

c: Debtor

Earl Gillian, Attorney for Debtor

Brenda D. Hetrick, Attorney for Creditor

Curtis C. Reding, Trustee